

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

February 17, 2016 at 10:00 a.m.

1.	<u>15-29301</u> -E-13	CONNELL JOHNSON Mohammad M. Mokarram	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 1-4-16 [<u>27</u>]
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Final Ruling: No appearance at the February 17, 2016 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Connell Johnson ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on January 4, 2016. The court computes that 44 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$79.00 due on December 30, 2015).

<p>The court's decision is to discharge the Order to Show Cause, and the case shall proceed in this court.</p>

The court's docket reflects that the default in payment which is the subjection of the Order to Show Cause has been cured.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions ordered, and the case shall proceed in this court.

February 17, 2016 at 10:00 a.m.

2. [15-28603-E-13](#) RICARDO SANCHEZ
DPC-2 Richard L. Sturdevant

MOTION TO DISMISS CASE
2-1-16 [[51](#)]

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 1, 2016. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----

The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on February 1, 2016. Dckt. 51.

The Trustee argues that the Debtor did not commence making plan payments and is \$10,142.00 delinquent in plan payments, which represents multiple months of the \$5,071.00 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

The Debtor presented no opposition to the Motion.

The court shall issue a minute order substantially in the following form holding that:

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

Final Ruling: No appearance at the February 17, 2016 hearing is required.

The court shall issue a minute order substantially in the following form holding that:

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

February 17, 2016 at 10:00 a.m.
- Page 3 of 101 -

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (Pro Se), and Office of the United States Trustee on February 1, 2016. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
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The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on February 1, 2016. Dckt. 23.

The Trustee argues that the Debtor did not commence making plan payments and is \$100.00 delinquent in plan payments, which represents one month of the \$100.00 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. The Debtor presented no opposition to the Motion.

Further, the Trustee alleges that the Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is

mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay which is prejudicial to creditors and cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

Additionally, the Trustee claims Debtor has not complied with Rule 1007(c) based on the Debtor's failure to file the Certificate of Credit Counseling. This is grounds to dismiss the case.

Also, the Trustee argues that the Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. See 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor failed to respond to the instant Motion.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

5. [15-26213](#)-E-13 LEILANI NOVAL
DPC-3 Ronald W. Holland

MOTION TO DISMISS CASE
1-20-16 [[65](#)]

Final Ruling: No appearance at the February 17, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 20, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Dismiss is granted and the case is dismissed.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on January 20, 2016. Dckt. 65.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$12,124.00 delinquent in plan payments, which represents multiple months of the \$6,062.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor has failed to respond to the instant Motion. Unfortunately, the Debtor has not provided evidence that the delinquency has been cured.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

6. 14-27114-E-13 SHAUN/AMANDA STAUDINGER MOTION TO DISMISS CASE
DPC-3 Scott J. Sagaria 1-20-16 [46]

Final Ruling: No appearance at the February 17, 2016 hearing is required.

The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice.

7. [15-21815](#)-E-13 SHELLE YOUNGBLOOD
DPC-1 Peter G. Macaluso

MOTION TO DISMISS CASE
1-19-16 [[33](#)]

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 19, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on January 19, 2016. Dckt. 33.

DEBTOR'S OPPOSITION

The Debtor filed an opposition to the instant Motion on February 3, 2016. Dckt. 37. The Debtor states that she will be current on or before the hearing.

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is \$400.00 delinquent in plan payments, which represents multiple months of the \$200.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately, the Debtor has not provided evidence that the delinquency has been cured.

Cause exists to dismiss this case. The motion is granted and the case

is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

8. 13-34521-E-13 PHILLIP NAILS
DPC-1 Peter G. Macaluso
WITHDRAWN BY M.P.

MOTION TO DISMISS CASE
1-19-16 [[35](#)]

Final Ruling: No appearance at the February 17, 2016 hearing is required.

The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice.

9. [15-25621](#)-E-13 MIRACLE WANZO
DPC-1 Scott D. Hughes

CONTINUED MOTION TO DISMISS
CASE
12-14-15 [[24](#)]

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 14, 2015. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to grant the Motion to Dismiss and the case is dismissed.
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David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on December 14, 2015. Dckt. 24. The Trustee seeks dismissal due to the Debtor's delinquency.

DEBTOR'S OPPOSITION

Miracle Wanzo ("Debtor") filed a response on January 6, 2016. Dckt. 28. The Debtor states that due to the way she makes payment through a merchant bank, she was unable to make payments. However, the Debtor states that she will be current by the time of the hearing.

JANUARY 20, 2016 HEARING

Debtor's counsel did not appear at the hearing. However, Debtor appeared and attempted to represent herself. Therefore, the court continued the hearing and orders Debtor's counsel to appear at the continued hearing on

10:00 a.m. on February 17, 2016.

DISCUSSION

To date, the Debtor has not filed any supplemental papers.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$5,340.00 delinquent in plan payments, which represents multiple months of the \$2,670.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately, the Debtor has not provided evidence that the delinquency has been cured.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

10. [14-29023](#)-E-13 DARREN CARTER AND AMY CONTINUED MOTION TO DISMISS
DPC-2 ALEXANDER-CARTER CASE
Scott J. Sagaria 12-17-15 [[53](#)]

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on December 17, 2015. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is that the Motion to Dismiss is granted and the case is dismissed.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on December 17, 2015. Dckt. 53. The Trustee seeks dismissal because the Debtor is in material default since the Debtor failed to provide for the priority claim of the United States Postal Service, Proof of Claim No. 13.

DEBTOR'S OPPOSITION

Darren Carter and Amy Alexander-Carter ("Debtor") filed an opposition on December 21, 2015. Dckt. 57. The Debtor states that the Debtors are now separated and living in separate households for the past two months. Additional Debtor Amy Alexander-Carter's car was recently in an accident and totaled. The Debtor request that the court offer additional time to reevaluate the case.

JANUARY 20, 2016 HEARING

At the hearing, the court continued the Motion to 10:00 a.m. on February 17, 2016. Dckt. 59.

DISCUSSION

The Bankruptcy Codes requires that a Chapter 13 plan provide for payment in full of priority claims, 11 U.S.C. § 1322(a)(2) & (4). The Debtor's plan does not provide for the priority claim of the United States Postal Service, Proof of Claim No. 13, in the amount of \$6,203.71. The failure to provide for this claim is grounds to dismiss the case.

Unfortunately, the Debtor's opposition does not provide sufficient cause to continue the case. The Debtor responded a nearly month prior to the hearing and, to date, no modified plan nor Motion to Confirm has been filed. Further, no evidence is offered in opposition. No declaration has been provided by Debtor. Instead, Debtor's counsel merely argues "facts" for which there is no evidence presented.

To date, the Debtor has not filed any supplemental papers in connection with the instant Motion nor proposing a modified plan.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

11. [11-36625](#)-E-13 DARRYL YOUNG
DPC-2 Peter G. Macaluso

MOTION TO DISMISS CASE
1-19-16 [[61](#)]

Final Ruling: No appearance at the February 17, 2016 hearing is required.

The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case (Dckt. 76), the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice, and the case shall proceed in this court.

12. [14-22226](#)-E-13 SHAHLA HOWELL
DPC-1 Scott J. Sagaria

MOTION TO DISMISS CASE
1-19-16 [[27](#)]

Final Ruling: No appearance at the February 17, 2016 hearing is required.

The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on January 19, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on January 19, 2016. Dckt. 26.

The Trustee argues that the Debtor did not commence making plan payments and is \$1,016.00 delinquent in plan payments. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. The Debtor presented no opposition to the Motion.

Also, the Trustee argues that the Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. See 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor failed to file a response to the instant Motion. Unfortunately, the Debtor has not provided evidence that the delinquency has been cured.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

14. [15-27035](#)-E-13 FREDERICK FONOTI
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-7-16 [[32](#)]

DEBTOR DISMISSED: 01/22/2016

Final Ruling: No appearance at the February 17, 2106 hearing is required.

The case having previously been dismissed, the Order is discharged as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order is discharged as moot, the case having been previously dismissed.

15. [15-27136](#)-E-13 SALLY CRIZALDO MOTION TO DISMISS CASE
DPC-2 Peter G. Macaluso 1-15-16 [[34](#)]

Final Ruling: No appearance at the February 17, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 15, 2016. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to deny the Motion to Dismiss without prejudice.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on January 15, 2016. Dckt. 34. The Trustee seeks dismissal due to the Debtor's delinquency in plan payments and the Debtor has not filed an amended proposed plan.

DEBTOR'S OPPOSITION

The Debtor filed an opposition to the instant Motion on February 3, 2015. Dckt. 38. The Debtor states that she intends to convert the case to one under Chapter 7 and will file an application to convert prior to the hearing.

DISCUSSION

On February 12, 2016, Debtor filed her Notice of Election to Convert this case to one under Chapter 7 (Dckt. 44).

The case having been converted, the Motion is denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied

without prejudice.

16. [15-27236-E-13](#) JAMES/KARI BIRDSEYE MOTION TO DISMISS CASE
DPC-2 Robert Hale McConnell 2-2-16 [[52](#)]

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 2, 2016. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
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The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on February 2, 2016. Dckt. 52.

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on November 19, 2015. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor

offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

The Debtor has not filed a response.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

17. [15-22139](#)-E-13 NANCY/DANIEL BALAGUY
DPC-2 Richard L. Sturdevant

MOTION TO DISMISS CASE
1-19-16 [[89](#)]

Final Ruling: No appearance at the February 17, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 19, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Dismiss is granted and the case is dismissed.
--

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on January 19, 2016. Dckt. 89.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,654.83.00 delinquent in plan payments. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Additionally, the Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on September 22, 2015. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

The Debtor has failed to file a response to the instant Motion. Unfortunately, the Debtor has not provided evidence that the delinquency has been cured.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

18. [15-29640-E-13](#) DANIEL MAYER
Candace Y. Brooks

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-20-16 [[16](#)]

Final Ruling: No appearance at the February 17, 2016 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Daniel Mayer ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on January 20, 2016. The court computes that 28 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$79.00 due on January 15, 2016).

The court's decision is to discharge the Order to Show Cause, and the case shall proceed in this court.
--

The court's docket reflects that the default in payment which is the subjection of the Order to Show Cause has been cured. The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions ordered, and the case shall proceed in this court.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 20, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on January 20, 2016. Dckt. 36. The Trustee seeks dismissal due to the Debtor's delinquency in plan payments.

DEBTOR'S OPPOSITION

The Debtor filed an opposition to the instant Motion on January 30, 2016. Dckt. 40. The Debtor admits that she is delinquent in plan payments. However, the Debtor states that this was due to the Debtor inadvertently over drawing from the bank account. The Debtor has addressed the issue and has set up a new account. The Debtor states that she will be current before the hearing.

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,275.00 delinquent in plan payments, which represents multiple months of the \$425.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately, the Debtor has not provided evidence that the delinquency has been cured.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

20. [15-28741](#)-E-13 PAMELA MCGAUGHY
Thomas L. Amberg

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-14-16 [[22](#)]

Final Ruling: No appearance at the February 17, 2016 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Pamela McGaughy ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on January 14, 2016. The court computes that 34 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on January 11, 2016).

The court's decision is to discharge the Order to Show Cause, and the case shall proceed in this court.
--

The court's docket reflects that the default in payment which is the subjection of the Order to Show Cause has been cured.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the

court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions ordered, and the case shall proceed in this court.

21. 12-30142-E-13 ROBERT/LESLIE MACKRILL MOTION TO DISMISS CASE
DPC-1 Sally C. Gonzales 1-20-16 [[40](#)]

Final Ruling: No appearance at the February 17, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 20, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Dismiss is granted and the case is dismissed.
--

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on January 20, 2016. Dckt. 40.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$6,900.00 delinquent in plan payments, which represents multiple months of the \$3,450.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor has failed to file a response. Unfortunately, the Debtor has not provided evidence that the delinquency has been cured.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

22. [15-28843](#)-E-13 MARIA ANDRICHUK
DPC-2 Pro Se

MOTION TO DISMISS CASE
1-13-16 [[24](#)]

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on January 13, 2016. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on January 13, 2016. Dckt. 24.

The Debtor has not provided the Trustee with employer payment advices for the 60-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). Also, the Trustee argues that the Debtor did not

provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. See 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor has failed to respond to the instant Motion.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

23. [10-44745-E-13](#) MARK/DEBORAH KNOCHENHAUER MOTION TO DISMISS CASE
DPC-2 Gary Ray Fraley 1-20-16 [[97](#)]

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 20, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on January 20, 2016. Dckt. 97. The Trustee seeks dismissal due to the Debtor's delinquency in plan payments.

DEBTOR'S OPPOSITION

The Debtor filed an opposition on February 3, 2016. Dckt. 102. The Debtor admits that they are delinquent and will be unable to make the payment prior to the hearing. The Debtor asserts that they will propose a plan payment to make the final payment due to complete their Chapter 13 case.

DEBTOR'S DECLARATION

The Debtor filed a declaration on February 10, 2016. Dckt. 104. The Debtor proposes the following payments:

February 12, 2016 - \$3,350.00
February 19, 2016 - \$2,000.00
March 4, 2016 - \$1,556.32
March 19, 2016 - \$1,556.32

The Debtor states that there is no amendment anticipated to the Chapter 13 plan.

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is \$8,462.64 delinquent in plan payments, which represents multiple months of the \$2,115.66.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

While the Debtor proposes an alternative payment plan, the Debtor remains delinquent. Unfortunately, the Debtor has not provided evidence that the delinquency has been cured.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 19, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on January 19, 2016. Dckt. 50. The Trustee seeks dismissal due to the Debtor failing to file a subsequent proposed plan following the denial of the prior plan.

DEBTOR'S REPLY

The Debtor filed a reply on February 5, 2016. Dckt. 54. The Debtor states that there were not unreasonable or foreseeable delays and that the delay was due to the Debtor not properly providing for the "Rent to Own" furniture.

DISCUSSION

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on September 22, 2015. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

The Debtor's response does not provide any explanation for the delay in filing a new plan nor when the Debtor will be submitting a new proposed plan. Rather, the Debtor's reply states "the missing property is a Rent to Own bill for a television set with a current value of \$400.00."

The reply concludes with:

An amended Chapter 13 Plan would not reasonable serve the Debtor or prejudice the creditors that are being and have been paid through the chapter 13 plan.

Dckt. 54.

To date, while Debtor filed a Plan (Dckt. 13), no Plan has been confirmed in this case. Other than a car payment and paying Debtor's counsel, no other claims are to be paid.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

25. [15-27345](#)-E-13 MICHAEL HAMMER
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-21-16 [[37](#)]

DEBTOR DISMISSED: 01/22/2016

Final Ruling: No appearance at the February 17, 2016 hearing is required.

The case having previously been dismissed, the Order is discharged as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order is discharged as moot, the case having been dismissed.

26. [11-20146](#)-E-13 TIMOTHY GAINES
DPC-7 Michael O'Dowd Hays

MOTION TO DISMISS CASE
1-20-16 [[77](#)]

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 20, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required

by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on January 20, 2016. Dckt. 77. The Trustee seeks dismissal due to the Debtor's delinquency in plan payments.

DEBTOR'S OPPOSITION

The Debtor filed an opposition on February 4, 2016. Dckt. 93. The Debtor states that due to his employment as a self employed roofer, he fell behind in payments. The Debtor, without consulting his attorney, borrowed funds to pay off his mortgage in full, which was only \$6,460.79.

The Debtor asserts that the Trustee no longer had to send Ditech the monthly \$1,183.82 share of what would have been his \$1,402.00 plan payment. The Debtor has allegedly also paid the Trustee \$1,500.00 to address the difference for the last three months to pay the other creditors.

DEBTOR'S SUPPLEMENTAL DOCUMENT

On February 8, 2016, the Debtor filed a supplemental document. Dckt. 96. The declaration states:

Attached are copies of the Debtor's recent loan for \$27,000.00, the Final Settlement Statement from Mid Valley Title and Escrow dated 1/5/16 showing \$6,460.79 sent to Ditech to pay off his outstanding mortgage balance and \$19,856.21 sent to Debtor, and Debtor's 2.1.16 email referencing the repairs to his home "new roof, heat&ac, carpet, drywall repairs and exterior' for which the funds are apparently allocated.

Id.

TRUSTEE'S RESPONSE

The Trustee filed a response on February 8, 2016. Dckt. 98. The Trustee states that the Debtor is delinquent in the amount of \$2,706.00. Furthermore, the Trustee indicates that the Debtor did not indicate the amount of the loan, where the monies were borrowed from, or to offer evidence of the pay off.

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,706.00 delinquent in plan payments, which represents multiple months of the \$1,402.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

As noted by the Trustee and the Debtor, the Debtor took out a loan to

pay off his remaining mortgage without getting the authorization of the court. To date, no Motion to Incur Debt has been filed requesting retroactive authority.

Under the terms of the existing confirmed Modified Plan, Debtor is obligated to make the following plan payments:

- i. 2/25/11 through 2/25/12.....\$1,460.00
- ii. 3/25/12 through 4/25/13.....\$1,471.77
- iii. 5/25/13 through 60th Month.....\$1,402.00.

These payments total \$85,850.78.

The Trustee filed his Motion to Dismiss on January 20, 2016, asserting a delinquency of \$2,804.00. In addition, the 60th month payment for January 2016 in the amount of \$1,402.00 remained to be paid. The total amount remaining to be paid is \$4,206.00.

Debtor argues that notwithstanding the terms of the Plan, he can forgo making the \$4,206.00 required payments, and instead make only a single \$1,500.00 payment (the difference between the required \$1,402.00 plan payment and the required Class 1 payment for the secured claim which Debtor close to payoff outside of the plan by the loan obtained without authorization).

Debtor does not have the option to unilaterally modify his Plan, choose to obtain loans without court authorization, divert monies from the Trustee, and then "fix it" by making a discounted plan payment when caught by the Trustee. Debtor is, and has been represented by counsel in this case. Debtor's counsel elected to be paid a \$3,500.00 flat fee in this case. Confirmation Order, Dckt. 25. Though counsel provided additional services in having to confirm a modified plan and to deal with numerous notices of default in plan payments issued by the Trustee, he has not sought any additional fees.

Debtor has not sought to further modify the plan to provide for lower payments. Debtor has not sought a hardship discharge. What Debtor has done is, without regard to the Bankruptcy Code done it "his way." He has chosen to borrow money without court authorization. He has chosen to unilaterally reduce his plan payments.

When confronted by the Trustee, Debtor's response was that because he didn't have jobs in the winter months (as a self-employed roofer), he couldn't make the plan payments. Though he was in bankruptcy and unable to make the plan payments, Debtor states that he could borrow money to accelerate the payments to the creditor having the claim secured by Debtor's home. Declaration, Dckt. 94. In the Declaration Debtor does not state how someone with no income, unable to make plan payments, was able to obtain a loan.

A supplemental declaration purporting to disclose the loan obtained by Debtor was filed on February 8, 2016. Dckt. 96. This declaration is not provided by Debtor, but Debtor's attorney in this case. No testimony is provided as to how the attorney has any personal knowledge of the loan or can properly authenticate the exhibits which are attached to the Declaration. Fed. R. Evid. 601, 602.

Unfortunately, Debtor seeks to have this court cut too many corners and allow Debtor to write his personal bankruptcy code to serve his needs. The court cannot, and will not, ignore the law and merely rubber stamp whatever the Debtor wants.

There is a confirmed plan in this case for which the default in payments through January 2016 was \$4,206.00. The Debtor having made a \$1,500.00 payment, an arrearage of \$2,706.00 still exists. The court cannot ignore that arrearage. The court cannot ignore the confirmed Modified Plan.

Therefore, Debtor being in default under the confirmed plan and there not being a motion to modify or a motion for hardship discharge having been filed, cause exists to dismiss the case.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

27. [11-20146](#)-E-13 TIMOTHY GAINES
MOH-2 Michael O'Dowd Hays

CONTINUED MOTION TO AVOID LIEN
OF DISCOVER BANK
1-22-16 [[81](#)]

Tentative Ruling: The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, and Office of the United States Trustee on January 26, 2016. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

The Motion to Avoid Judicial Lien is denied without prejudice.

This Motion requests an order avoiding the judicial lien of Discover Bank ("Creditor") against property of Timothy L. Gaines ("Debtor") commonly known as 3443 Charlene Avenue, Oroville, California (the "Property").

FEBRUARY 9, 2016 HEARING

At the hearing, the court continued the hearing to 10:00 a.m. on February 17, 2016 due to the additional information as to the Debtor borrowing unauthorized funds to pay off the Debtor's remaining mortgage balance.

DISCUSSION

A judgment was entered against Debtor in favor of Creditor in the amount of \$12,309.44. An abstract of judgment was recorded with **Butte** County on February 5, 2008, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$90,000 as of the date of the petition. The unavoidable consensual liens total \$58,715.06 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$31,284.94 on Schedule C.

On February 8, 2016, the Debtor filed a supplemental documentation as to an unauthorized loan taken by the Debtor to pay the outstanding balance of the mortgage of \$6,460.79 to Ditech. Dckt. 96.

Courts have found that "exemptions and impairment are determined on the date of bankruptcy and without reference to subsequent changes in the character or value of the exempt property." *In re Chiu*, 266 B.R. 743, 751 (B.A.P. 9th Cir. 2001) aff'd, 304 F.3d 905 (9th Cir. 2002)(citation omitted).

Here, at the date of filing, the unavoidable consensual liens totaled \$58,715.06. While the subsequent payment of the balance throughout the plan may have created equity in the Property, the determination of whether a judicial lien impairs an exemption is done at the time of the filing.

Therefore, after application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing could be avoided subject to 11 U.S.C. § 349(b)(1)(B).

However, due to the default in plan payments, the court is dismissing this case, the case being dismissed, the Motion is denied without prejudice.

ISSUANCE OF A COURT DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Avoid the judgment lien of Discover Bank, California Superior Court for Butte County Case No. 140758, recorded on February 5, 2008, Document No. 2008-0004205 with the Butte County Recorder, against the real property commonly known as 3443 Charlene Avenue, Oroville, California, is denied without prejudice.

28. [11-20146](#)-E-13 TIMOTHY GAINES
MOH-3 Michael O'Dowd Hays

CONTINUED MOTION TO AVOID LIEN
OF DODEKA, LLC AND/OR MOTION TO
AVOID LIEN OF SUNLAN LDP, LLC
1-22-16 [[85](#)]

Tentative Ruling: The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, and Office of the United States Trustee on January 26, 2016. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

The Motion to Avoid Judicial Lien is denied.

This Motion requests an order avoiding the judicial lien of Dodeka, LLC and or Sunlan LDP, LLC ("Creditor") against property of Timothy L. Gaines ("Debtor") commonly known as 3443 Charlene Avenue, Oroville, California (the "Property").

FEBRUARY 9, 2016 HEARING

At the hearing, the court continued the hearing to 10:00 a.m. on February 17, 2016 due to the additional information as to the Debtor borrowing unauthorized funds to pay off the Debtor's remaining mortgage balance.

DISCUSSION

A judgment was entered against Debtor in favor of Creditor in the amount of \$8,591.60. An abstract of judgment was recorded with Butte County on May 12, 2010, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$90,000 as of the date of the petition. The unavoidable consensual liens total \$58,715.06 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$31,284.94 on Schedule C.

On February 8, 2016, the Debtor filed a supplemental documentation as to an unauthorized loan taken by the Debtor to pay the outstanding balance of the mortgage of \$6,460.79 to Ditech. Dckt. 96.

Courts have found that "exemptions and impairment are determined on the date of bankruptcy and without reference to subsequent changes in the character or value of the exempt property." *In re Chiu*, 266 B.R. 743, 751 (B.A.P. 9th Cir. 2001) aff'd, 304 F.3d 905 (9th Cir. 2002)(citation omitted).

Here, at the date of filing, the unavoidable consensual liens totaled \$58,715.06.

Failure to Provide For Claim of Creditor

In the sixtieth month of the Modified Plan, when all payments required thereunder are to be complete, Debtor filed this Motion. In reviewing the Modified Plan, Debtor has failed to provide for the treatment of Creditor's secured claim.

The confirmed Modified Plan filed in this case, Dckt. 36, provide the following basic terms:

- a. Plan Payments Made By Debtor -
 - i. 2/25/11 through 2/25/12.....\$1,460.00
 - ii. 3/25/12 through 4/25/13.....\$1,471.77
 - iii. 5/25/13 through 60th Month.....\$1,402.00.
- b. Class 1 Secured Claims To Be Paid Through Plan -
 - i. Everhome Mort
 - (1) Monthly Contract Installment.....(\$942.77)
 - (2) Arrearage Payment.....(\$241.05)
- c. Class 2 Secured Claims Modified by Plan

- i. Not Reduced Based on Value of Collateral.....None
 - ii. Reduced Based on Value of Collateral.....None
 - iii. Reduced to \$0.00 Based on Value of Collateral..None
- d. Class 3 Secured Claims Satisfied By Surrender
 - i. None
- e. Class 4 Secured Claims Paid Directly By Debtor
 - i. None
- f. Class 5 Unsecured Priority Claims
 - i. Internal Revenue Service
 - ii. California Franchise Tax Board
 - iii. Carolyn Chan
- g. Class 6 Designated Unsecured Claims
 - i. None
- h. Class 6 General Unsecured Claims
 - i. 7% Dividend
 - ii. Secured Claim filed by Sunlan, LDP, LLC to be amended to be unsecured or determined by court to be unsecured due to creditor having only a judgment lien and "not a true security interest."

The Sunlan LDP, LLC claim was never amended to be stated as a general unsecured claim. Proof of Claim No. 13, Clerk's Register of Claims in the Bankruptcy Case. No motion to value the secured claim of Sunlan LDP, LLC has been filed in this bankruptcy case by Debtor.

On January 22, 2016, Debtor filed this Motion to Avoid the Judicial Lien of "Dodeka, LLC and or Sunlan LDP, LLC." Dckt. 85. The Motion seeks to avoid the lien pursuant to 11 U.S.C. § 522(f), contending that the value of the property securing the claim is less than the senior liens and the Debtor's homestead exemption.

The Motion asserts that the claim of "Dodeka, LLC and or Sunlan LDP, LLC was "listed for discharge on Debtor(s) Schedule F." *Id.* No proof of claim has been filed by a Dodeka, LLC, and neither the Motion to Avoid Lien or the supporting Declaration (Dckt. 87) provide any indication of from where this other person appears. In reviewing Proof of Claim No. 3, the court notes that there is an attachment which is titled "Acknowledgment of Assignment of Judgment," which states that the judgment was originally obtained by Dodeka, LLC and was assigned to Sunlan LDP, LLC.

This Motion to Avoid was filed in January 2016, the 60th Month of the Plan. This is after all Plan payments were required to be completed. This is after the Trustee was required to have all but the final month of plan payments disbursed. Until January 2016, the secured claim of Sunlan LDP, LLC was not provided for by the Plan, Debtor apparently electing to leave Sunlan LDP, LLC to its collateral if, someday, it had any value for the judgment lien. Sunlan LDP, LLC having elected to file a fully secured claim it was not entitled to receive any unsecured dividend in this case. Sunlan LDP, LLC having filed a fully secured claim and the plan not providing for reducing the claim based on the value of the collateral, Sunland LDP, LLC did not have an interest in objecting to the Plan based on the proposed treatment of general unsecured claims. Debtor not having filed a motion to value the secured claim of Sunland LDP, LLC pursuant to 11 U.S.C. § 506(a), Sunland LDP, LLC did not have an opportunity to litigate the value of the property that secures its claim or have any notice that Debtor asserted the fully secured claim of Sunland LDP, LLC was a general unsecured claim.

The court cannot now, after the Debtor elected to not provide for the secured claim of Sunland LDP, LLC in the Modified Plan, after Debtor elected not to value the secured claim of Sunland LDP, LLC, after Debtor provide no notice to Sunland LDP, LLC that its secured claim would actually be treated as a general unsecured claim, and after Debtor's bankruptcy case has now exceeded the sixty months of the Modified Plan, the court retroactively change the secured claim of Sunland LDP, LLC to an unsecured claim not provided for in Debtor's Modified Chapter 13 Plan.

As discussed COLLIER ON BANKRUPTCY, SIXTEENTH ED., ¶ 1327.02, confirmation of the Chapter 13 Plan becomes the binding contract between the parties.

" Upon becoming final, the order confirming a chapter 13 plan represents a binding determination of the rights and liabilities of the parties as ordained by the plan. Absent timely appeal, the confirmed plan is res judicata and its terms are not subject to collateral attack. 3 The res judicata effect of confirmation may be eliminated only if confirmation is revoked, or if the case is later dismissed or converted to another chapter.

...

The purpose of section 1327(a) is the same as the purpose served by the general doctrine of res judicata. There must be finality to a confirmation order so that all parties may rely upon it without concern that actions that they may later take could be upset because of a later change or revocation of the order. 6 As the bankruptcy appellate panel for the Ninth Circuit held:

'It would hardly serve the purposes for which the federal bankruptcy laws were intended to permit a dissatisfied creditor to withhold its opinion of the practicality and fairness of a debtor's plan until after that plan has been completed. At such a late point in time, a meaningful modification of the plan is difficult, if not impossible, and the objecting creditor is in a position to circumvent the

protective shield provided debtors under chapter 13.' [Citing *In re Gregory*, 19 B.R. 668, 670 (B.A.P. 9th Cir. 1982) , *aff'd*, 705 F.2d 1118 (9th Cir. 1983).]"

COLLIER ON BANKRUPTCY, SIXTEENTH ED., ¶ 1327.02[1].

The discussion in Collier continues, stating:

"[a] Burden on Creditors to Review and Object to Plan

The binding effect of the confirmation order establishes the rights of the debtor and creditors as those that are provided in the plan. It is therefore incumbent upon creditors with notice of the chapter 13 case to review the plan and object to the plan if they believe it to be improper; they may ignore the confirmation hearing only at their peril.⁹ [*In re Gregory*, 705 F.2d 1118, 1123 (9th Cir. 1983)] Of course, if the plan is ambiguous, the court may still have to resolve disputes as to the rights of the parties, and in such cases the plan may be construed against the debtor, the party who drafted it.¹⁰ [*Brawders v. County of Ventura (In re Brawders)*, 503 F.3d 856 (9th Cir. 2007)] Such disputes are limited to the terms of the plan itself, and do not extend to terms or agreements that are unwritten or not of record.

[b] Creditors Restricted to Rights Afforded by Plan

Because creditors are limited to those rights that they are afforded by the plan, they may not take actions to collect debts that are inconsistent with the method of payment provided for in the plan. They may not exercise pre-petition rights they may have had to collect a debt by setoff, foreclosure or otherwise...Once the plan is confirmed the only cause for relief from the stay that may be validly asserted is the debtor's material failure to comply with the plan. A creditor that had the opportunity to object that the plan did not meet the standards for confirmation, which provide the protections Congress deemed appropriate for the various types of creditors, may not later assert any interest, such as a right to setoff, other than that provided for it by the confirmed plan...."

Id.

The Confirmed Modified Plan expressly addresses secured claims which are not provided for in the plan as follows:

"2.12. Secured claims not listed as Class 1,2.3. or 4 claims are not provided for by this plan. The failure to provide for a secured claim in one of these classes may be cause to terminate the automatic stay."

Modified Plan, ¶ 2.12; Dckt. 36.

In the Modified Plan, Additional Provisions, buried in a reference to paragraph 2.15 dealing with general unsecured claims, Debtor states,

"Re: 2.15-Claim1: filed as unsecured totaled \$16,198.14. The \$10,508.12 claim filed by SUNLAN, LDP, LLC as "Secured" is expected to be voluntarily amended to unsecured by the creditor or determined by the Court to be treated as unsecured due to only having a judgment lien and not as true security interest. The total of these two amounts is the \$26,706.26 listed at 2.15 as the total of the unsecured claims."

Modified Plan, Additional Provisions, *Id.*

Debtor has not shown, or even argued, that the secured claim of Sunlan LDP, LLC has been provided for by the Plan. Further, that burying in a provision addressing unsecured claim a reference to the Debtor affirmatively acting to have the court reclassify the secured claim filed an unsecured claim under the plan constitutes a binding plan provision which so reclassified the claim. Debtor has taken no action to so reclassify the claim and has insured that Sunlan LDP, LLC would not be paid a dividend on its unsecured claim by waiting until the 60th month of the plan to spring the Motion to Avoid Lien on this Creditor. Further, Debtor insured that Sunlan LDP, LLC would not come forward to oppose the plan or treatment of its claim by leaving Sunlan LDP, LLC with a secured claim until spring the Motion to Avoid Lien until the 60th month of the Plan.

While Creditor has not filed an opposition, the court is concerned that by ignoring the law concerning confirmation of the plan, the secured claim provisions of the Plan, and the lack of action by Debtor to have the secured claim filed by Creditor reclassified as a general unsecured claim, the granting of the Motion would be in clear violation of the Bankruptcy Code. See *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 130 S. Ct. 1367, 1381 n.14, 176 L. Ed. 2d 158, 173 n.14 (2010); see also *Varela v. Dynamic Brokers, Inc. (In re Dynamic Brokers, Inc.)*, 293 B.R. 489, 499 (B.A.P. 9th Cir. 2003) (citing *Everett v. Perez (In re Perez)*, 30 F.3d 1209, 1213 (9th Cir. 1994)).

Additionally, granting the Motion could also appear as a green light by the court for debtors and their attorneys to write potentially deceptive plan terms, failure to promptly act and prosecute cases in good faith, and then draw the court into a web of deceit and deception.

Judicial estoppel provides for a further basis to deny the instant Motion. Equitable doctrines, such as equitable and judicial estoppel focus upon conduct. *Alary Corp. v. Sims (In re Associated Vintage Group, Inc.)*, 283 B.R. 549, 565 (B.A.P. 9th Cir. 2002).

Equitable estoppel requires the following elements:

- (1) The party to be estopped must know the facts;
- (2) He must intend that his conduct shall be acted on or must so act that the party asserting the estoppel has a right to believe it is so intended;
- (3) The latter must be ignorant of the true facts; and

(4) He must rely on the former's conduct to his injury.

United States v. Ruby Co., 588 F.2d 697, 703 (9th Cir. 1978). Since estoppel is an equitable doctrine, it should be applied "where justice and fair play require it." *Id.*

Judicial estoppel is an equitable doctrine that encompasses a variety of different situations that revolve around the concern for preserving the integrity of the judicial process. *In re Associated Vintage Group, Inc.*, 283 B.R. at 565. The doctrine extends to incompatible statements and positions in different cases. *Rissetto v. Plumbers & Steamfitters Local 343*, 94 F.3d 597 (9th Cir. 1996).

Independent of unfair advantage from inconsistent positions, judicial estoppel may be imposed: out of "general consideration of the orderly administration of justice and regard for the dignity of judicial proceedings;" or to "protect against a litigant playing fast and loose with the courts." Hamilton, 270 F.3d 778 at 782; Russell, 893 F.2d at 1037. Moreover, it may be invoked "to protect the integrity of the bankruptcy process." Hamilton, 270 F.3d 778 at 785.

In re Associated Vintage Group, Inc., 283 B.R. at 556. The Ninth Circuit requires that the inconsistent position have been "accepted" by the first court. *Id.*

Debtor's plan fails to provide for the Claim of Creditor. Debtor's plan leaves Creditor with only its secured claim and lien rights. Debtor accepted Creditor as having a fully secured claim and did not make any effort to have the court bifurcate the claim between secured and unsecured pursuant to 11 U.S.C. § 506(a). Debtor's Plan and inaction has worked to insure that Creditor be precluded from receiving an unsecured dividend. Judicial estoppel neatly fits into the instant fact pattern, by disallowing the Debtor to take a conflicting position at the expense of the Creditor.

Debtor having failed to provide for the secured claim, Debtor having elected to not have the secured claim valued, and Debtor electing to leave the Creditor its collateral, the Motion to Avoid Lien is denied.

Finally, Debtor being in substantial default under the Plan and not seeking to either further modify the plan or seek a hardship discharge, the court is dismissing the bankruptcy case. This is a separate and independent basis for denying the Motion.

ISSUANCE OF A COURT DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the

court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Avoid the judgment lien of Dodeka, LLC and or Sunlan LDP, LLC, California Superior Court for Butte County Case No. 143825, recorded on May 12, 2008, Document No. 2010-0015503 with the Butte County Recorder, against the real property commonly known as 3443 Charlene Avenue, Oroville, California, is denied.

29. [11-25546-E-13](#) **CESAR/PACITA RAVENA** **MOTION TO DISMISS CASE**
DPC-6 **Richard A. Chan** **1-19-16 [[104](#)]**

Final Ruling: No appearance at the February 17, 2016 hearing is required.

The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice.

30. [15-23946](#)-E-13 ANA RODRIGUEZ
DPC-2 Peter G. Macaluso

MOTION TO DISMISS CASE
1-19-16 [[36](#)]

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 19, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on January 19, 2016. Dckt. 36. The Trustee seeks dismissal due to the Debtor's delinquency in plan payments.

DEBTOR'S OPPOSITION

The Debtor filed an opposition on February 3, 2016. Dckt. 40. The Debtor states that she will be current before or at the time of the hearing.

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,460.00 delinquent in plan payments, which represents multiple months of the \$1,280.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately, the Debtor has not provided evidence that the delinquency has been cured.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

31. [15-25446](#)-E-13 DONALD MAH
DPC-3 Pro Se

CONTINUED MOTION TO DISMISS
CASE
12-18-15 [[59](#)]

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 18, 2015. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to grant the Motion to Dismiss and the case is dismissed.
--

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on December 18, 2015. Dckt. 59. The Trustee seeks dismissal due to the Debtor failing to file a subsequent plan after the denial of the Debtor's first.

Donald Mah ("Debtor") filed an opposition to the instant Motion on December 22, 2015. Dckt. 63. The Debtor states that he is seeking to have his attorney withdraw so that the Debtor can represent himself. The Debtor requests additional time to prepare a plan and Motion to Confirm.

On January 12, 2016, the court granted the Debtor's attorney's Motion to Withdraw as Counsel. Dckt. 70.

JANUARY 20, 2016 HEARING

At the hearing, due to the Debtor continuing in *pro se*, the court continued the instant Motion to 10:00 a.m. on February 17, 2016 to allow the Debtor the opportunity to file a proposed amended plan.

DISCUSSION

To date, the Debtor has not filed any supplemental papers in connection with the instant Motion.

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on September 15, 2015. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

Final Ruling: No appearance at the February 17, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 20, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Dismiss is granted and the case is dismissed.
--

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on January 20, 2016. Dckt. 41.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,238.00 delinquent in plan payments, which represents multiple months of the \$1,119.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor failed to file a response to the instant Motion. Unfortunately, the Debtor has not provided evidence that the delinquency has been cured.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and

upon review of the pleadings, evidence, arguments of counsel,
and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and
the case is dismissed.

33. [15-27047](#)-E-13 PRISCILLA/ANDREW CARRASCO MOTION TO DISMISS CASE
DPC-1 Peter G. Macaluso 1-28-16 [[63](#)]

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 28, 2016. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
-----.

The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on January 28, 2016. Dckt. 63.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$4,031.00 delinquent in plan payments, which represents multiple months of the \$2,015.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on January 12, 2016. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

The Debtor has failed to file a response to the instant Motion.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

34. [15-29147-E-13](#) JOHN QUIROZ
DPC-2 Richard Kwun

MOTION TO DISMISS CASE
1-28-16 [[31](#)]

Final Ruling: No appearance at the February 17, 2016 hearing is required.

The Chapter 13 Trustee having filed a Withdrawal of the Motion to Dismiss the Bankruptcy Case, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Motion to Dismiss the Bankruptcy Case was dismissed without prejudice, and the matter is removed from the calendar.**

35. [10-50148](#)-E-13 LAURA HALL MOTION TO DISMISS CASE
DPC-11 Robert Hale McConnell 1-20-16 [[98](#)]

Final Ruling: No appearance at the February 17, 2016 hearing is required.

The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice.

36. [15-22250](#)-E-13 PAULINE SIME MOTION TO DISMISS CASE
DPC-2 Mohammad M. Mokarram 1-19-16 [[26](#)]
WITHDRAWN BY M.P.

Final Ruling: No appearance at the February 17, 2016 hearing is required.

The Chapter 13 Trustee having filed a Withdrawal of the Motion to Dismiss the Bankruptcy Case, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Motion to Dismiss the Bankruptcy Case was dismissed without prejudice, and the matter is removed from the calendar.**

37. [11-28153](#)-E-13 PATRICK/PENNY MALCOLM MOTION TO DISMISS CASE
DPC-1 Peter G. Macaluso 1-19-16 [[45](#)]
WITHDRAWN BY M.P.

Final Ruling: No appearance at the February 17, 2016 hearing is required.

The Chapter 13 Trustee having filed a Withdrawal of the Motion to Dismiss the Bankruptcy Case, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Motion to Dismiss the Bankruptcy Case was dismissed without prejudice, and the matter is removed from the calendar.**

38. [14-24955](#)-E-13 ANTOINETTE TRIGUEIRO MOTION TO DISMISS CASE
DPC-2 Sally C. Gonzales 1-20-16 [[54](#)]

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 20, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on January 20, 2016. Dckt. 54. The Trustee seeks dismissal because the Debtor's plan will complete in excess of 60 months due to the Debtor's mortgage payment increase.

DEBTOR'S RESPONSE

The Debtor filed a response on February 3, 2016. Dckt. 58. The Debtor states that she will propose a modified plan prior to February 17, 2016. The Debtor notes that she has questions over the increased mortgage payment.

DISCUSSION

Debtor is in material default under the plan because the plan will complete in more than the permitted 60 months. According to the Trustee, the plan will complete in 81 months due to the Debtor's mortgage payment increased from \$3,000.00 to \$3,860.95 and the unsecured claims being \$9,430.77 greater than scheduled. This exceeds the maximum 60 months allowed under 11 U.S.C. § 1322(d). Therefore, the objection is sustained.

To date, the Debtor has not filed a modified plan nor a Motion to Confirm.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (pro se) and Office of the United States Trustee on February 1, 2016. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
-----.

<p>The court's decision is to continue the hearing to 10:00 a.m. on xxxxxxxxxx, 2016 for the Trustee's Motion to Dismiss.</p>
--

The Trustee asserts that the Debtor did not properly serve the Plan on all interested parties and has yet to file a motion to confirm the Plan. The Plan was filed after the notice of the Meeting of Creditors was issued. Therefore, the Debtor must file a motion to confirm the Plan. See Local Bankr. R. 3015-1(c)(3). A review of the docket shows that no such motion has been filed. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Further, the Trustee alleges that the Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is

unreasonable delay which is prejudicial to creditors and cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

The Debtor has not provided the Trustee with employer payment advices for the 60-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). Also, the Trustee argues that the Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. See 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee further objects, stating that the petition may not be filed in good faith. The Debtor has failed to list the 6 prior bankruptcies between 2010 and 2015 filed by the Debtor. The Debtor does not disclose this information. The failure to provide accurate and complete information is grounds to dismiss the case.

The Debtor failed to respond to the instant Motion.

Though the Trustee points out the heretofore undisclosed prior bankruptcy filings by Debtor, there are additional related bankruptcy filings in which Debtor has participated and litigated. Those cases were filed by her brother, Jeffrey Akzam, and are:

A. 11-25844 in *Pro Se*

1. Chapter 13 Filed March 9, 2011
2. Motion to Dismiss for failure to file motion to confirm plan, failure to file tax returns, failure to provide most recent tax return, and failure to provide copies of business records. Dckt. 28.
3. Case converted to Chapter 7 at request of debtor Jeffrey Akzam. Order, Dckt. 42.
4. Discharge entered September 2, 2011.

B. 13-20155 in *Pro se*

1. Chapter 13 Filed January 7, 2013.
2. Case dismissed because of debtor Jeffery Akzam's failure to file tax returns and Mr. Akzam's failure to file a motion to confirm a Chapter 13 Plan. Civil Minutes, Dckt. 73. The court also determined that the Plan, as proposed by debtor Jeffery Akzam was not feasible and the plan was underfunded. *Id.*
3. In connection with Jeffery Akzam's Chapter 13 case 13-20155, Jeffery Akzam filed an Adversary Proceeding disputing the lien of Option One Mortgage. Adv. 13-2103.

- a. After granting a motion to dismiss the Complaint, a First Amended Complaint was filed, in which Debtor Dianne Akzam was added as a joint plaintiff with Jeffery Akzam. Debtor Dianne Akzam and her brother Jeffery Akzam disputed the secured claim and alleged violations of the automatic stay.
- b. The court determined that abstention pursuant to 28 U.S.C. § 1334(c), the court finding that there were no issues arising under the Bankruptcy Code or in the bankruptcy case. Civil Minutes, Dckt. 85.

C. 14-30332 in *Pro Se*

1. Chapter 13 Case filed October 17, 2014
2. Case dismissed on July 8, 2015.
3. The case was dismissed due to debtor Jeffrey Akzam's failure to file an amended plan after the court denied confirmation of the proposed plan. Civil Minutes, Dckt. 83.

The six prior bankruptcy cases filed by Debtor are summarized as follows:

14-28272 <i>In Pro Se</i>	Chapter 13 Case	Filed August 14, 2014 Dismissed September 29, 2014
	<p>I. Case dismissed for failure to filed Schedules, Statement of Financial Affairs, and Chapter 13 Plan.</p> <p>II. Court denied Debtor's Motion to Extend the Automatic Stay 11 U.S.C. § 362(c)(3)(B). Dckt. 28. The court discussed in detail the Debtor's history of failure to prosecute prior multiple bankruptcy cases. Civil Minutes, Dckt. 28.</p> <p>III. Also the court issued an order to show cause why the case should not be dismissed due to failure to pay filing fees.</p>	
14-23825 <i>In Pro Se</i>	Chapter 13 Case	Filed April 14, 2014 Dismissed July 23, 2014

	I. Case dismissed because Debtor did not meeting the eligibility requirements for a Debtor in a Chapter 13 case as (1) she did not have any regular income and (2) had not filed a Certificate of Pre-Filing Credit Counseling. Dckt. 49.	
12-37369 <i>In Pro Se</i>	Chapter 13 Case	Filed September 27, 2012. Dismissed November 19, 2012
	<p>I. The case was dismissed due to Debtor failing to file Schedules, Statement of Financial Affairs, and Plan. Dckt. 21.</p> <p>II. Motion to Vacate Dismissal Order denied. Order, Dckt. 33</p> <p>III. Also the court issued an order to show cause why the case should not be dismissed due to failure to pay filing fees.</p>	
11-43187 <i>In Pro Se</i>	Chapter 13 Case	Filed September 27, 2011 Dismissed December 14, 2011
	<p>I. The case was dismissed for failure of Debtor to file Schedules, Statement of Financial Affairs, and Plan. Order, Dckt. 25.</p> <p>II. Case also dismissed due to Debtor failing to pay filing fees. Order, Dckt. 26.</p>	
11-20282 <i>In Pro Se</i>	Chapter 13 Case	Filed January 4, 2011 Dismissed March 18, 2011
	<p>I. Case dismissed due to Debtor's failure to attend First Meeting of Creditors and failure to file motion to confirm Chapter 13 Plan. Motion and Order, Dckts. 22, 27.</p> <p>II. Also the court issued an order to show cause why the case should not be dismissed due to failure to pay filing fees.</p>	
10-45216 <i>In Pro Se</i>	Chapter 13 Case	Filed September 22, 2010 Dismissed December 16, 2010
	<p>I. The bankruptcy case was dismissed due to Debtor failing to file a motion to confirm the Chapter 13 Plan and Debtor being delinquent in Plan payments. Motion and Order, Dckts. 22, 38.</p> <p>II. Also the court issued an order to show cause why the case should not be dismissed due to failure to pay filing fees.</p>	

Jeffrey Akzam and his sister, the Debtor Diane Akzam, have filed a series of coordinated Chapter 13 cases without either of them engaging in the good faith prosecution of those cases. To the extent that either of them believe they have a bona fide dispute with the lender who asserted a lien against property in which these two debtor believed they had an interest, those issues are outside of bankruptcy.

In connection with the most recent filing by Diane Akzam, the U.S. Trustee has commenced an Adversary Proceeding seeking injunctive relief to preclude Diane Akzam from filing further non-productive bankruptcy cases. 15-2247.

Clearly, the Debtor lack of good faith prosecution of this case warrants action under 11 U.S.C. § 1307. That could be dismissal of the case or conversion to Chapter 7 to allow an independent fiduciary Chapter 7 Trustee to take possession of all property of the bankruptcy estate, liquidate all non-exempt property, and make a disbursement to creditors.

Even if the court were to dismiss this case, an issue arises whether the dismissal should be with prejudice, Debtor having repeated filed bankruptcy cases which she has failed to prosecute in good faith.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion to Dismiss is continued to 10:00 a.m. on xxxxxxxxxx, 2016.

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 28, 2016. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
-----.

The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on January 28, 2016. Dckt. 37.

The Trustee argues that the Debtor did not commence making plan payments and is \$8,600.00 delinquent in plan payments, which represents multiple months of the \$4,300.00 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

The Debtor presented no opposition to the Motion. Unfortunately, the Debtor has not provided evidence that the delinquency has been cured.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

41. 13-34164-E-13 ANGELINA ROBINSON MOTION TO DISMISS CASE
DPC-5 Mark Alonso 1-19-16 [144]

Final Ruling: No appearance at the February 17, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 19, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Dismiss is granted and the case is dismissed.
--

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on January 19, 2016. Dckt. 144.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$9,922.00 delinquent in plan payments, which represents multiple months of the \$4,958.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor failed to file a response to the instant Motion. Unfortunately, the Debtor has not provided evidence that the delinquency has been cured.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

42. [15-25168](#)-E-13 DEBRA MCCLAIN
DPC-3 Peter L. Cianchetta

MOTION TO DISMISS CASE
1-15-16 [[57](#)]

Final Ruling: No appearance at the February 17, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 15, 2016. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Dismiss is denied without prejudice.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on January 15, 2016. Dckt. 57. The Trustee seeks dismissal on the grounds that the Debtor has failed to file an amended plan and Motion to Confirm after the denial of the Debtor's prior plan.

DEBTOR'S REPLY

The Debtor filed a reply on February 9, 2016. Dckt. 63. The Debtor states that she filed and served an amended plan on February 9, 2016. The Debtor further states that the Debtor is current under the proposed plan.

DISCUSSION

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on December 15, 2015.

A review of the docket shows that Debtor has filed a new plan and a motion to confirm a plan. Dckt. 65 and 68. The hearing is set for April 12, 2016 at 1:30 p.m.

The court has reviewed the Motion to Confirm the Amended Plan and the Declaration I support filed by the Debtor. Dckts. 65 and 67. The Motion appears to comply with Fed. R. Bankr. P. 9013 (stating grounds with particularity) and

the Declaration appears to provide testimony as to facts to support confirmation based upon her personal knowledge (Fed. R. Evid. 601, 602).

The Debtor have acted to amend the plan and doing so in a manner consistent with the Federal Rules of Bankruptcy Procedure and Federal Rules of Evidence, the Motion is denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied without prejudice.

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (pro se) and Office of the United States Trustee on January 26, 2016. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----

The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on January 26, 2016. Dckt. 38.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$3,847.86.00 delinquent in plan payments, which represents multiple months of the \$1,962.43.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor has not provided the Trustee with employer payment advices for the 60-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). Also, the Trustee argues that the Debtor did not provide either a tax transcript or a federal income tax return with attachments

for the most recent pre-petition tax year for which a return was required. See 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor has failed to respond to the instant Motion.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

44. [15-22069](#)-E-13 KARA MORA
DPC-2 Peter G. Macaluso

MOTION TO DISMISS CASE
1-20-16 [[60](#)]

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 20, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on January 20, 2016. Dckt. 60. The Trustee seeks dismissal due to the Debtor's delinquency.

DEBTOR'S OPPOSITION

The Debtor filed an opposition on February 3, 2015. Dckt. 64. The Debtor states that she will be current on or before the hearing.

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is \$500.00 delinquent in plan payments, which represents multiple months of the \$250.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately, the Debtor has not provided evidence that the delinquency has been cured.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

45. [15-29669](#)-E-13 TIFFANY BAILEY
Michael O'Dowd Hays

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-21-16 [[18](#)]

Final Ruling: No appearance at the February 17, 2016 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Tiffany Bailey ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on January 21, 2016. The court computes that 27 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$79.00 due on January 19, 2016).

**The court's decision is to discharge the Order to Show Cause,
and the case shall proceed in this court.**

The court's docket reflects that the default in payment which is the subjection of the Order to Show Cause has been cured.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions ordered, and the case shall proceed in this court.

46. [13-35771](#)-E-13 GREGORY/CHRISTI SMOAK
DPC-1 C. Anthony Hughes

MOTION TO DISMISS CASE
1-19-16 [[45](#)]

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 19, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on January 19, 2016. Dckt. 45. The Trustee seeks dismissal due to the Debtor's delinquency in plan payments.

ANTHONY HUGHES' RESPONSE

On February 3, 2016, Anthony Hughes, "attorney for Debtor," filed a response. Dckt. 49. Mr. Hughes states that the Debtor does not want the case to be dismissed and requests additional time to file a motion to modify.

PETER MACALUSO'S OPPOSITION

On February 3, 2016, the Debtor filed an opposition to the instant Motion. The Opposition states:

COME NOW DEBTORS, Gregory S. Smoak & Christi L. Smoak, by and through Peter G. Macaluso, Attorney at Law, for thier attorney of record, C. Anthony Hughes, and oppose the Motion of the Trustee to Dismiss the Chapter 13 Case.

Debtors respond and state that they will be current on or before the hearing in this matter

Dckt. 51.

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,569.01 delinquent in plan payments, which represents multiple months of the \$1,432.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

First, the court notes that the Debtor here is apparently being represented by two attorneys. On August 6, 2015, the Debtor filed a Motion to Substitute Attorney for Debtor. Dckt. 42. However, the Debtor nor Mr. Macaluso nor Mr. Hughes filed a copy of the retainer agreement. To date, no order substituting Mr. Macaluso as the attorney of record has been entered.

Additionally, the two attorneys who filed responses on behalf of the Debtor offer two different means of allegedly curing the delinquency: (1) modifying the plan or (2) curing the delinquency.

However, even with the two alternatives, the Debtor has not provided evidence that the delinquency has been cured nor has a proposed plan and Motion to Modify been filed.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

47. [15-27472](#)-E-13 RIGOBERTO/FELIX RODRIGUEZ ORDER TO SHOW CAUSE - FAILURE
Peter G. Macaluso TO PAY FEES
1-28-16 [[88](#)]

Final Ruling: No appearance at the February 17, 2016 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Rigoberto Rodriguez and Felix Torres Rodriguez ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on January 28, 2016. The court computes that 20 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on January 25, 2016).

**The court's decision is to discharge the Order to Show Cause,
and the case shall proceed in this court.**

The court's docket reflects that the default in payment which is the subjection of the Order to Show Cause has been cured.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions ordered, and the case shall proceed in this court.

48. [14-30877](#)-E-13 TROY HARDIN
DPC-2 Peter G. Macaluso

MOTION TO DISMISS CASE
1-20-16 [[44](#)]

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 20, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on January 20, 2016. Dckt. 44. The Trustee seeks dismissal due to the Debtor's delinquency in plan payments.

DEBTOR'S OPPOSITION

The Debtor filed an opposition on February 3, 2016. Dckt. 48. The Debtor states that he will be current on or before the hearing.

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is \$3,100.00 delinquent in plan payments, which represents multiple months of the \$2,180.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately, the Debtor has not provided evidence that the delinquency has been cured.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

49. [15-29479](#)-E-13 ANDRE WILLIAMS
DPC-1 Peter G. Macaluso

MOTION TO DISMISS CASE
2-1-16 [41]

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 1, 2016. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required

to file a written response or opposition to the motion. At the hearing -----
-----.

The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on February 1, 2016. Dckt. 41.

The Trustee argues that the Debtor did not commence making plan payments and is \$3,000.00 delinquent in plan payments, which represents multiple months of the \$3,000.00 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. The Debtor presented no opposition to the Motion.

The Trustee asserts that the Debtor did not properly serve the Plan on all interested parties and has yet to file a motion to confirm the Plan. The Plan was filed after the notice of the Meeting of Creditors was issued. Therefore, the Debtor must file a motion to confirm the Plan. See Local Bankr. R. 3015-1(c)(3). A review of the docket shows that no such motion has been filed. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Further, the Trustee alleges that the Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay which is prejudicial to creditors and cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

The Debtor has not provided the Trustee with employer payment advices for the 60-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). Also, the Trustee argues that the Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. See 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor failed to file a reply to the instant Motion.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

50. [11-27780](#)-E-13 RANDALL/KIMBERLEY BEFORT MOTION TO DISMISS CASE
DPC-10 Brandon Scott Johnston 1-20-16 [[72](#)]

Final Ruling: No appearance at the February 17, 2016 hearing is required.

The Chapter 13 Trustee having filed a Withdrawal of the Motion to Dismiss the Bankruptcy Case, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Motion to Dismiss the Bankruptcy Case was dismissed without prejudice, and the matter is removed from the calendar.**

51. [11-36981](#)-E-13 MONICA SAECHAO MOTION TO DISMISS CASE
DPC-6 Sally C. Gonzales 1-19-16 [[90](#)]

Final Ruling: No appearance at the February 17, 2016 hearing is required.

The Chapter 13 Trustee having filed a Withdrawal of the Motion to Dismiss the Bankruptcy Case, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Motion to Dismiss the Bankruptcy Case was dismissed without prejudice, and the matter is removed from the calendar.**

**NO TENTATIVE RULING
HEARING REQUIRED**

No Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 1, 2016. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
-----.

The court's decision is to xxxxxxx the Motion to Dismiss and dismiss the case.

Notice of Withdrawal of Motion

On February 12, 2016, the Trustee filed a Notice of Withdrawal of Motion. In light of the serious issues raised by the Third Amended Plan and evidence to support confirmation, the court issued no tentative ruling.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on February 1, 2016. Dckt. 131.

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on December 15, 2016. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

On February 11, 2016, Debtor filed a Third Amended Chapter 13 Plan. Dckt. 139. The Third Amended Plan provides for payments totaling \$12,809.09 through February 2016, and then \$1,560 a month payments for the remaining 49 months of the Plan. Under the Plan Debtor is to pay El Dorado Savings Bank the current monthly payment of \$541.52 and an arrearage payment of \$355.00 monthly for the claim secured by Debtor's residence.

Debtor will pay \$3,900.00 to her attorney through the proposed Third Amended Plan.

Debtor also provides for paying \$4,338.14 in delinquent property taxes (including statutory interest at the rate of 18% per annum), \$111.00 a month payment, and a secured claim of \$15,324 (with 3% interest), \$276.00 payment, on claims secured by her residence.

Debtor also has to pay Class 5 priority unsecured claims totaling \$3,395.34 (which averages \$57 a month if spread over 60 months).

No other claims are to be paid through the plan.

The court has constructed the following chart on payments and distributions to creditors through the Plan:

Total Plan Payments	\$89,249.09	
Chapter 13 Trustee Fees (Est. 8%)	(\$7,140.00)	
Debtor's Counsel	(\$3,900.00)	
Class 1 Secured Claim	(\$53,552.00)	Monthly Payments x 60
Class 2 Secured Claims	(\$23,220.00)	Monthly Payments x 60
Class 5 Priority Unsecured Claims	(\$3,395.34)	

Surplus/(Under Funding) of Plan	(\$1,958.25)	

Debtor does not provide her declaration in support of confirmation. The only testimony provided is that of Tom Carey, identified as a "friend" of the Debtor. Mr. Carey states that he understands that the Debtor will be in

a bankruptcy case "for the next 12 months." Declaration, Dckt. 137. Further, he intends to contribute \$810.00 a month to assist Debtor in funding her plan.

Debtor commenced this bankruptcy case on March 19, 2015. Debtor does not have only 12 months in this Chapter 13 case, but has more than 48 months to go. Mr. Carey's understanding that he will have to fund the plan with \$810 for only 12 months is incorrect.

Debtor has filed new Schedules I and J, stating under penalty of perjury that they are both "amended" (thereby correcting errors going back to the filing of this bankruptcy case) and Supplemental (only showing changes in income and expenses going forward). This leaves the court wondering whether the Debtor has any knowledge of her historic or ongoing income and expenses.

Debtor's only income consists of \$1,617.90 a month in Social Security, \$83.00 Workers' Compensation medical reimbursement, and a \$50.00 "discount on utilities." Amended/Supplemental Schedule I, Dckt. 142.

On Amended/Supplemental Schedule J, Debtor states under penalty of perjury that her monthly expenses are only \$1,000.90. Dckt. 142. To get to this number, Debtor states under penalty of perjury that her monthly expenses include:

- A. Total food and housekeeping expense is.....\$200.00
- B. Clothing, laundry, and dry cleaning.....\$ 5.00
- C. Personal Care.....\$ 5.00
- D. Transportation.....\$130.00
- E. Entertainment.....\$ 7.00

Even purporting to have only \$1,000.90 in expenses, Debtor is unable to fund a Chapter 13 Plan, make the current mortgage payments, make the arrearage payments, make the property tax arrearage payments, and pay the debt secured by a junior deed of trust against her residence.

Clearly, Debtor has no ability to perform the plan - absent a \$810.00 gift from a "friend" with an undisclosed relationship to Debtor. The friend will have no legal obligation to provide the \$810.00 a month "gift" to Debtor. The friend also testifies that he believes the Debtor has only 12 months in the Third Amended Chapter 13 Plan, when there will be more than 48 months.

The friend has not shown a financial ability to fund the Plan with more than \$38,880.00, or why a "friend" would pay such a large sum of money in this situation - absent there being a secret, undisclosed "deal" underlying the plan.

Further, Debtor has not obtained a legal commitment from the "friend" to fund the plan with \$38,880.00. The Debtor's ability to include the \$810.00 in her regular income is as ephemeral as J. Wellington Wimpy's promise to pay next Tuesday for a hamburger today. FN.1. If the person providing the money was the Debtor's son or other family member who had a financial interest in the care and maintenance of the Debtor, a mere promise of future money might have

some credibility. But a person with an undisclosed relationship saying that he will give the Debtor \$40,000.00, with no obligation to repay the money, does not sound credible.

FN.1. J. Wellington Wimpy was a character in the Popeye comic strip and cartoon series, known for his financial irresponsibility. Regulating Wall Street By J. Wellington Wimpy, by Bill Singer, Forbes Magazine November 2, 2009. <http://archive.is/L5Dd>. "That dodge worked. Time and time again... Wimpy cracked me up. I mean, geez, how stupid could all those folks be to fall for the same line over and over again? Nothing changed but it was always funny, just the same. Wimpy promised to pay Tuesday. He got his burger. He munched away in delight. Tuesday came and went but the debt was never repaid."

A look at Debtor's expenses appear to show facially that they are unreasonable and grossly understated. For the Debtor to represent (or misrepresent) that she will have to spend only \$60 a year on clothes the next four years is patently unreasonable. There is nothing in the record showing that Debtor actually spends only \$200 a month for food and housekeeping expenses. Assuming the Debtor spends \$25 a month on soap, shampoo, disinfectant, dish soap, toilet paper, paper towels, napkins, sponges, and the like, that would leave \$175 for food. With 31 days in the months and 3 meals a day, Debtor is representing that her food bill is \$1.88 per meal.

It appears that Debtor, the "friend," and Debtor's counsel are bent on condemning Debtor to a life of poverty, less than subsistence living, and a foreclosure by which she will lose her equity in the property. Such may well indicate that Debtor is at a time in her life that she lacks the legal capacity to understand her finances, her reasonable expenses, and what she has to lose. It may be that someone is attempting to cause Debtor to lose the equity in her home. Whether that is true the court does not know, but based on the evidence presented by Debtor, the Debtor shows that the Plan is not feasible.

While the actual determination of that issue must be made in connection with the motion to confirm, the court brings this to the attention of the Debtor, Debtor's counsel, Debtor's "friend" who wants to gift \$38,800, the Chapter 13 Trustee, and the U.S. Trust so that they can all be prepared for the hearing. Debtor may actually have evidence she can present to substantiate her \$1.88 meal expense for the next 48+ months. The "friend" may be willing to enter into a legal commitment to fund the plan, and provide the court with evidence of the ability to give \$38,800.00 to the Debtor - no strings attached.

In looking at the proofs of claim, it appears that leading up to the filing of this bankruptcy she issued several insufficient funds checks which are now being collected by the Placer County District Attorney. In addition, Placer County asserts that there are several additional unsecured penalties for a traffic ticket and others (unspecified basis) filed by Debtor which are owed to the County.

On Amended Schedule B Debtor lists owning a 1996 Toyota Pickup. Dckt. 53. No provision is made in the Plan for costs and expenses of this vehicle owned by Debtor. Debtor claims this vehicle as exempt on Amended Schedule C.

In light of the court's obligation to make sure that orders are properly issued and consistent with the law; See *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 130 S. Ct. 1367, 1381 n.14, 176 L. Ed. 2d 158, 173 n.14 (2010); see also *Varela v. Dynamic Brokers, Inc. (In re Dynamic Brokers, Inc.)*, 293 B.R. 489, 499 (B.A.P. 9th Cir. 2003) (citing *Everett v. Perez (In re Perez)*, 30 F.3d 1209, 1213 (9th Cir. 1994)); the court wants to make sure the Debtor and Debtor's counsel are not mislead into believing that the Chapter 13 Trustee's withdrawal of the Motion to Dismiss is a green light that the court will confirm whatever is put in front of it.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is **xxxxxxx**.

53. [15-23482](#)-E-13 CHRISTOPHER CONWAY
DPC-2 Mikalah R. Liviakis

MOTION TO DISMISS CASE
1-20-16 [[34](#)]

Final Ruling: No appearance at the February 17, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 20, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Dismiss is granted and the case is dismissed.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on January 20, 2016. Dckt. 34.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$7,792.00 delinquent in plan payments, which represents multiple months of the \$2,699.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor failed to file a response to the instant Motion.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

54. [11-23583](#)-E-13 LUGENIA JOHNSON
DPC-1 James L. Keenan

MOTION TO DISMISS CASE
1-20-16 [[53](#)]

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 20, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on January 20, 2016. Dckt. 53. The Trustee seeks dismissal due to the Debtor's delinquency in plan payments.

DEBTOR'S ATTORNEY'S OPPOSITION

Debtor's counsel filed an opposition on January 19, 2016. Dckt. 57. Debtor's counsel states that the Debtor died last year. Debtor's counsel states that the Debtor's daughter has been in contact with the attorney but has not followed up on substitution paper work or made plan payments. The Debtor's attorney claims that he will contact the daughter to determine her intentions.

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is \$6,310.23 delinquent in plan payments, which represents multiple months of the \$2,099.18.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

This bankruptcy case was filed on February 12, 2011. January 2016 was the sixtieth month of the case. The last payment from the "Debtor" was received on October 19, 2015. Debtor's counsel states that Debtor died "last year," without disclosing the date of death. From the response, it appears that it may have been late in 2015.

Unfortunately, the Debtor's successor has not provided evidence that the delinquency has been cured. Additionally, no Motion to Substitute a Personal Representative for the deceased Debtor has been filed.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 16, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to grant the Motion to Dismiss and dismiss the case.

John Randy Hatten ("Debtor") filed for Chapter 13 relief on march 3, 2015. Dckt. 1.

David Cusick, the Chapter 13 Trustee ("Trustee") filed the instant Motion to Dismiss on September 16, 2015. Dckt. 17. Trustee declares that Debtor is delinquent by \$3,726.55, which represents multiple months of Debtor's \$1,908.85 payment. Dckt. 19 ¶ 3.

At the October 14, 2015 hearing, the Debtor appeared at the hearing and stated that he had been in the hospital, and requested additional time to meet with counsel to address the defaults. Dckt. 21. The court continued the hearing to 10:00 a.m. on January 20, 2016. Dckt. 23.

At the January 20, 2016 hearing, Debtor appeared at the hearing, but counsel did not appear. It was not clear to the court whether counsel's non-appearance was due to a calendaring error or a belief that Debtor and counsel had determined that the court should be dismissed. To avoid any confusion and misunderstanding, the court continued the hearing to 10:00 a.m. on February 17, 2016 so that counsel can be present with the Debtor to address the dismissal.

FEBRUARY 17, 2016 HEARING

To date, the Debtor has failed to file any subsequent papers.

Trustee's objection is well-taken.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$3,726.55 delinquent in plan payments, which represents multiple months of the \$1,908.85 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor failed to respond to the instant Motion.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

56. [15-27384](#)-E-13 PAUL/CYNTHIA RENDON
Mohammad M. Mokarram

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-25-16 [[23](#)]

Final Ruling: No appearance at the February 17, 2016 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Tiffany Bailey ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on January 25, 2016. The court computes that 23 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on January 19, 2016).

The court's decision is to discharge the Order to Show Cause, and the case shall proceed in this court.
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The court's docket reflects that the default in payment which is the subjection of the Order to Show Cause has been cured.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions ordered, and the case shall proceed in this court.

57. [15-27785](#)-E-13 LATANYA MOORE
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-5-16 [[41](#)]

Final Ruling: No appearance at the February 17, 2016 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Tiffany Bailey ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on January 5, 2016. The court computes that 43 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$73.00 due on December 31, 2015).

The court's decision is to discharge the Order to Show Cause, and the case shall proceed in this court.
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The court's docket reflects that the default in payment which is the subjection of the Order to Show Cause has been cured.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions ordered, and the case shall proceed in this court.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on January 19, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on January 19, 2016. Dckt. 43. The Trustee seeks dismissal due to the Debtor's delinquency in plan payments and the Debtor failed to file a plan following the prior plan not being confirmed.

DEBTOR'S OPPOSITION

The Debtor filed an opposition on February 3, 2016. Dckt. 47. The Debtor states that she is in the process of consulting with an attorney. The Debtor states that she can propose a new plan and requests approximately 75 days to comply.

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is \$972.00 delinquent in plan payments. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee's Motion additionally argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on December 8, 2015. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Debtor's most recent prior bankruptcy case was filed on July 31, 2014. 14-27870. Debtor was represented by counsel in the prior case. The prior case was dismissed on September 17, 2015. The Debtor was \$5,445.00 delinquent in plan payments (monthly payments of \$1,085.00). Civil Minutes, Dckt. 75. Debtor did not prosecute a modified plan, and sought a continuance because she was contemplating converting the case to one under Chapter 7. *Id.*

This bankruptcy case was filed October 2, 2015, just sixteen days after dismissal of the prior case. In the prior case, Debtor was in default since March 2015. For past ten months, Debtor was in default under the plan in her prior case and has made one plan payment (of three that have come due) in this case.

Unfortunately, the Debtor has not provided evidence that the delinquency has been cured. Nor has the Debtor substituted in an attorney to represent her nor has the Debtor filed a proposed plan.

Looking at the Plan Debtor she filed in this case, the only three creditors with secured claims, with each claim secured by a different vehicle. Chapter 13 Plan, Dckt. 7. Debtor lists owing three vehicles on Schedule B. Dckt. 1 at 13. On Schedule C Debtor claims an exemption in each vehicle. *Id.* at 15. For two of the vehicles, Debtors lists the creditors as having substantial unsecured portion of the claims. *Id.* at 16.

On Schedule J Debtor lists having two dependant daughters - one age 15 and the other age 25. Debtor does not explain why she is paying for three vehicles when she appears to be the only adult in the family. Debtor states on the Statement of Financial Affairs, Question 16, that she has no spouse and has not had one within the eight years preceding the commencement of this bankruptcy case. *Id.* at 35.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

59. [11-49386](#)-E-13 CHRISTINA SCOTT
DPC-7 Mary Ellen Terranella

MOTION TO DISMISS CASE
1-19-16 [[83](#)]

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 19, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on January 19, 2016. Dckt. 83. The Trustee seeks dismissal due to the Debtor's delinquency in plan payments.

DEBTOR'S OPPOSITION

The Debtor filed an opposition on February 3, 2016. Dckt. 87. The Debtor states that she fell behind payments because Debtor's mother had to be hospitalized for just over a week which led to the Debtor losing In Home Health Services income. However, the Debtor states that her mother has returned to live with her and that the Debtor is attempting to take on additional overtime to make up the payment. The Debtor states that she plans on being current by February 11, 2016.

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,662.00.00 delinquent in plan payments, which represents multiple months

of the \$1,032.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately, the Debtor has not provided evidence that the delinquency has been cured.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

60. [14-31186](#)-E-13 NESTOR AQUINO AND
DPC-1 ANGELINA VILLON
Mark A. Wolff

MOTION TO DISMISS CASE
1-20-16 [[24](#)]

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 20, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on January 20, 2016. Dckt. 24. The Trustee seeks dismissal due to the Debtor's delinquency in plan payments.

DEBTOR'S RESPONSE

The Debtor filed a response on February 3, 2016. Dckt. 28. The Debtor's attorney states that he has been unable to contact the Debtor in connection with the instant Motion. The Debtor's attorney requests that the court extend the deadline for Debtor to respond.

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is \$9,900.00 delinquent in plan payments, which represents multiple months of the \$3,300.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

This bankruptcy case was filed on November 13, 2014. The order confirming the Chapter 13 Plan on February 3, 2015. Dckt. 21. The Motion to Dismiss was filed on January 20, 2016 - stating that Debtor was, as of that date, in default \$9,900.00, with another \$3,300.00 plan payment coming due on January 25, 2016. Dckt. 24.

Unfortunately, the Debtor has not provided evidence that the delinquency has been cured.

Though Counsel advises the court that the Debtor has not communicated with counsel concerning the defaults or this Motion, such is not grounds to continue the hearing, allowing the Debtor to gain additional bankruptcy time delay benefits by ignoring the defaults. However, such response by Counsel is proper, and necessary to avoid the Debtor's default from being entered and the case dismissed by final ruling.

At the hearing, ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

61. [15-27786](#)-E-13 RAJESH KAPOOR
Fred A. Ihejirika

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-5-16 [[45](#)]

DEBTOR DISMISSED: 01/25/2016

Final Ruling: No appearance at the February 17, 2016 hearing is required.

The case having previously been dismissed, the Order is dismissed as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order is dismissed as moot, the case having been dismissed.

62. [13-28189](#)-E-13 TONY/MARGARITA CERVANTES
DPC-1 Gerald B. Glazer
WITHDRAWN BY M.P.

MOTION TO DISMISS CASE
1-20-16 [[69](#)]

Final Ruling: No appearance at the February 17, 2016 hearing is required.

The Chapter 13 Trustee having filed a Withdrawal of the Motion to Dismiss the Bankruptcy Case, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Motion to Dismiss the Bankruptcy Case was dismissed without prejudice, and the matter is removed from the calendar.**

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 19, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on January 19, 2016. Dckt. 84. The Trustee seeks dismissal on the grounds that the Debtor is delinquent \$9,090.00 in plan payments.

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is \$342.51 delinquent in plan payments, which represents multiple months of the \$115.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

64. [14-28890-E-13](#) JOANN ARTIAGA MOTION TO DISMISS CASE
DPC-3 Peter G. Macaluso 1-20-16 [[92](#)]

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 20, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on January 20, 2016. Dckt. 92. The Trustee seeks dismissal on the grounds that the Debtor is delinquent \$2,875.00 in plan payments.

DEBTOR'S OPPOSITION

The Debtor filed an opposition on February 3, 2016. Dckt. 96. The Debtor states that she will be current on or before the hearing.

DISCUSSION

To date, the Debtor has not filed a modified plan nor motion to confirm. The Debtor does not provide any evidence that the delinquency has been cured.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,875.00 delinquent in plan payments, which represents multiple months of the \$2,375.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 19, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on January 19, 2016. Dckt. 49. The Trustee seeks dismissal on the grounds that the Debtor is delinquent \$342.51 in plan payments (Debtor having \$115.00 monthly plan payments).

DEBTOR'S OPPOSITION

The Debtor filed an opposition on February 3, 2016. Dckt. 53. The Debtor states that she made a \$50.00 payment to the Trustee prior to the instant objection. The Debtor states that she will be current at or before the hearing.

DISCUSSION

To date, the Debtor has not filed a modified plan nor motion to confirm. The Debtor does not provide any evidence that the delinquency has been cured.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$342.51 delinquent in plan payments, which represents multiple months of the \$115.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

66.	14-31993-E-13 DAVID/ROWENA ABBOTT DPC-2 Scott J. Sagaria	MOTION TO DISMISS CASE 1-20-16 [51]
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Final Ruling: No appearance at the February 17, 2016 hearing is required.

The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice.